

Title: Agreement between West Germany, Austria, and Switzerland relating to the withdrawal of water from Lake Constance

Parties: Austria, Germany [FRG], Switzerland

Basin: Rhine

Date: 4/30/1966

AGREEMENT REGULATING THE WITHDRAWAL OF WATER
FROM LAKE CONSTANCE, BERNE 1966

The Federal Republic of Germany, the Republic of Austria and the Swiss Confederation, desiring so to regulate the withdrawal of water from Lake Constance as to take due account of the legitimate interests of the riparian States, have decided to conclude an Agreement and have appointed as their plenipotentiaries:

who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

Article 1

(1) The riparian States of Lake Constance, namely the Federal Republic of Germany, the Republic of Austria and the Swiss Confederation, undertake to observe the provisions of this Agreement when withdrawing water from Lake Constance.

(2) Each riparian State shall, in withdrawing water, endeavour to take due account of the legitimate interests of the other riparian States.

Article 2

(1) For the purposes of this Agreement, Lake Constance comprises the Upper Lake and the Lower Lake.

(2) For the purposes of this Agreement, the region of Lake Constance comprises, in the territory of the Federal Republic of Germany, the hydrological catchment area of the lake, in the territory of the Republic of Austria, the hydrological catchment area of the lake, and in the territory of the Swiss Confederation the hydrological catchment area of the lake lying within the cantons of Appenzell (Outer Rhoden and Inner Rhoden), St. Gallen and Thurgau, the catchment area of the Tur in the canton of Thurgau - excluding the catchment area of the Murg above the commune of Frauenfeld and the catchment area of the Sitter.

(3) This Agreement shall apply only to withdrawals of water made at a rate exceeding 50 l/sec.

Article 3

(1) Where a projected withdrawal of water from Lake Constance is such that it would adversely affect important interests of the other riparian States and the adverse effects cannot be avoided or offset by reasonable compensatory measures of indemnification, the interest attaching to the withdrawal of water shall be duly assessed in relation to the other interests. In that assessment particular consideration shall be given to the interest attaching to the maintenance and improvement of living and economic conditions in the region of Lake Constance. This shall apply especially to the interests involved in the various types of utilization of the water of the lake, in navigation, in fishing, in the regulation of the lake, in landscape preservation and in power production.

(2) Withdrawals of water from Lake Constance shall not be deemed to justify any claim to the provision of water in a specific volume or of a specific quality.

(3) The measures to be taken in order to keep the waters of Lake Constance clean shall be governed by the Agreement of 27 October 1960 concerning the protection of Lake Constance against pollution.

Article 4

Where withdrawals of water result in unforeseen damage for which reparation must be made under international law, the riparian States shall reach agreement on the nature and extent of the reparation.

Article 5

Where the combined effect of a number of withdrawals of water makes it necessary, under article 3 or article 4, to make compensatory measures, pay an indemnity or make reparation, each riparian State shall participate in such measures, indemnification or reparation in proportion to the amount of water it has withdrawn.

Article 6

The riparian States shall notify one another forthwith of all withdrawals of water from Lake Constance which are not subject to the provisions of article 7. In such cases, the technical authorities concerned shall deal with one another directly.

Article 7

In the following cases, the riparian States shall, before authorizing withdrawals of water, afford one another in good time an opportunity to express their views:

(a) When the water is to be used outside the hydrological catchment area of Lake Constance and is to be withdrawn at a rate exceeding 750 l/sec.;

(b) When the water is to be used within the hydrological catchment area of Lake Constance and is to be withdrawn at a rate exceeding 1,500 l/sec.

Article 8

(1) Where, in the course of an expression of views pursuant to article 7, objections are raised under the provisions of article 3, the case shall be submitted to a consultative committee for consideration at the technical level with a view to preparing the way for an agreement. The same procedure shall be followed in the cases referred to in articles 4 and 5.

(2) The consultative committee shall be composed of one representative of each of the riparian States. The representatives may be accompanied by advisers.

(3) In matters relating exclusively to the Lower Lake, only the votes of the Federal Republic of Germany and the Swiss Confederation shall be counted.

(4) Any riparian State may require the consultative committee to meet for the purpose of dealing with other questions relating to withdrawals of water.

Article 9

(1) Where the riparian States are unable to reach agreement through discussions in the consultative committee on a matter of the kind referred to in article 8, paragraph (1), agreement shall be sought through the diplomatic channel.

(2) If no agreement is reached through the diplomatic channel, any interested riparian State may require that the case should be submitted to an arbitration commission.

Article 10

(1) The arbitration commission shall have three members. The latter may not be nationals of one of the riparian States; they may not have been concerned with the case previously in a different connexion.

(2) Each of the parties in the arbitration proceedings shall appoint one member of the arbitration commission. If a party consists of two riparian States, the latter shall appoint one member by agreement between them. The two members appointed by the parties shall choose a chairman.

(3) If one of the parties has not appointed its members within two months after being notified of the request for the initiation of arbitration proceedings, the said member shall be designated, at the request of the other party, by the President of the European Court of Human Rights.

(4) If the two members are unable to agree on the choice of a chairman within two months after their appointment, he shall be designated, at the request of one of the parties, by the President of the European Court of Human Rights.

(5) If, in one of the cases referred to in paragraphs (3) and (4), the President of the European Court of Human Rights is unable to perform the function in question or is a national of one of the riparian States, the designation shall be made by the Vice-President. If the latter is also unable to perform that function or is a national of one of the riparian States, the designation shall be made by the most senior member of the Court who is not a national of one of the riparian States.

Article 11

(1) The arbitration commission shall endeavour, at every stage of the proceedings, to bring about an amicable settlement of the case. If it does not prove possible to achieve such a settlement, the commission shall adopt a decision by majority vote. The said decision shall be final and shall be binding upon all the riparian States.

(2) The arbitration commission shall base its proposals for a settlement and its decisions on:

-The provisions of this Agreement;

-Any relevant agreements of a general or special nature in force between the riparian States;

-The general principles of law.

Article 12

(1) Unless the parties agree otherwise, the arbitration commission shall establish its own rules of procedure.

(2) The riparian State which is not a party in the arbitration proceedings may at any time enter the proceedings as an intervenor.

Article 13

(1) This Agreement is subject to ratification. The instruments of ratification shall be deposited with the Government of the Swiss Confederation as soon as possible, The Agreement shall enter into force thirty days after the deposit of the last instrument of ratification.

(2) The Agreement shall remain in force until such time as it is denounced, on six months' notice with effect at the end of the year, by one of the riparian States.

IN WITNESS WHEREOF the plenipotentiaries of the riparian States have signed this Agreement.

DONE at Berne in triplicate on 30 April 1966.

FINAL PROTOCOL

The riparian States of Lake Constance are in agreement on the following points:

1. Ad article 3, paragraph (1):

No consideration shall be given to interests which may suffer adverse effects as a result of the utilization of the water in question when there is not a sufficient causal link between the adverse effects and the actual withdrawal of the water. Thus, for example, objections to a withdrawal of water may not be based on the fact that the utilization of the water may strengthen the economy of a particular region and thereby adversely affect the interests of one of the riparian States.

The last sentence of this provision shall not be deemed to restrict the concept of "living and economic conditions" to the interests referred to therein.

2. Ad article 3, paragraph (2):

Legal claims having some other basis shall not be affected by this provision.

3. Ad article 3, paragraph (3):

The Agreement of 27 October 1960 concerning the protection of Lake Constance against pollution shall remain unaffected.

4. Ad article 6:

The technical authorities concerned, within the meaning of this provision, shall be:
In the case of the Federal Republic of Germany:

The Ministry of Internal Affairs of Baden-Württemberg and the State Ministry of Internal Affairs of Bavaria;

In the case of the Republic of Austria:
The Land Government Office of Vorarlberg;

In the case of the Swiss Confederation:
The Department of Public Works of the canton of St. Gallen and the Department of Highways and Public Works of the canton of Thurgau.

The technical authorities shall inform one another, within a period of one year, of all withdrawals of water being made from Lake Constance at the time of the entry into force of the Agreement regulating the withdrawal of water from Lake Constance.

5. *Ad article 13:*

With the exception of article 5, this Agreement shall apply only to future withdrawals of water. The existing regulations governing withdrawals which are currently being made shall not be affected by this Agreement.

DONE at Berne in triplicate on 30 April 1966.